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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,402	07/09/2003	William Henry Lewis	012407.000081	9221

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THOMPSON & KNIGHT L.L.P.  
PATENT PROSECUTION DEPARTMENT  
98 SAN JACINTO BLVD., SUITE 1900  
AUSTIN, TX 78701

EXAMINER
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LOBO, IAN J

ART UNIT	PAPER NUMBER
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3662

DATE MAILED: 06/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n N .

10/616,402

Applicant(s)

LEWIS ET AL.

Examiner

Ian J. Lobo

Art Unit

3662

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/9/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 4, 13, 18, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by the patent to Menezes ('468).

The patent to Menezes discloses a system for controlling aquatic populations in a defined area. The system includes a submersible device (18) and a programmable control unit (10) operably connected to the submersible unit. The programmable control unit includes a processor (CPU), a memory device and input device (EPROM) for storing a plurality of digital sound recordings (col. 13, line 6 – col. 14, line 66) and selecting one or more of the digital sound recordings to be played via the submersible device. Claim 4 is so anticipated.

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With respect to claim 13, the method disclosed in Menezes (see col. 4, lines 31-44 and col. 15, lines 1-58) includes selecting one or more digital soundings from a memory device, selecting a delay period, repeatedly transmitting a signal to an underwater transducer where the signal corresponds to the digital soundings.

With respect to claims 18 and 20, see Fig. 1.

With respect to claim 19, see Fig. 4.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5-11 and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Menezes ('468).

Claims 5-7 and 14-17 specify controlling the volume of playback. Claim 6 of Menezes claims control and variance of the sonic signal intensity. It is obvious to one of ordinary skill in the art that the control of the intensity of a signal is tantamount to controlling the volume, such that the instant claims are obvious over the system of Menezes (see col. 4, lines 31-44).

With respect to claims 8 and 9, it is apparent that delayed and intermittent signals are variables of obvious design choice, over Menezes, to one of ordinary skill in the art.

With respect to claims 10 and 11, col. 15, lines 35-36, detail that “predator sounds” are used. The claimed “fish in distress” and “prey being attacked and eaten” sounds, as claimed in claims 10 and 11, are provided by the “predator sounds” of Menezes.

With respect to claim 12, it is a design choice to duplicate known parts (in the instant case, the transducer element) and obvious to one of ordinary skill in the art .

5. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holt ('858) when taken in view of Menezes ('468).

Holt discloses a submersible device (see Fig. 9) for attracting and stimulating aquatic animals. The device includes a watertight housing (100), a first transducer element (135), and a diaphragm (140) connected to the diaphragm. The device is operable as a speaker in response to control signals from a programmable device and emits prerecorded acoustical signals in response to the prerecorded signals.

The difference between claim 1 and the structure disclosed in Holt is the claim specifies that the acoustical signals comprise "sounds of prey being attacked and eaten underwater".

Menezes discloses a system for controlling underwater aquatic animal populations by transmitting acoustical sounds underwater that are "predator sounds". Predator sounds underwater are not patentably distinguishable over the instant claimed "sounds of prey being attacked and eaten". Menezes teaches that such sounds provide an improvement by providing an adaptive modification and automatic change sound to reflect predicted and measured changes in environment and species. Thus, it would be obvious to one of ordinary skill in the art to modify Holt to include and transmit prerecorded predator acoustical signals of prey being attacked and eaten so as to improve the device. Claim 1 is so rejected.

Claim 3 is disclosed in Holt since a fishing lure inherently includes a flotation device.

With respect to claim 2, it is a design choice to duplicate known parts (in the instant case, the transducer and diaphragm of Holt) and obvious to one of ordinary skill in the art.

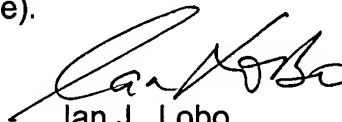
***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ian J. Lobo whose telephone number is (703) 306-4161. The examiner can normally be reached on Monday - Friday, 6:30 - 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas H. Tarcza can be reached on (703) 306-4171. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Ian J. Lobo  
Primary Examiner  
Art Unit 3662